before the date that the QDOT election must be made, *S* transfers the life insurance proceeds and the specifically devised real property to the QDOT. *S* decides not to transfer the property that had been jointly owned to the QDOT. Because S has not received distribution of the pecuniary bequest before *D*'s estate tax return is filed and before the date that the QDOT election must be made, *S* irrevocably assigns the interest in the pecuniary bequest to the QDOT. Assume that the pecuniary bequest is in fact transferred by *S* to the QDOT before the estate administration is concluded. *D*'s executor makes a QDOT election on the estate tax return for the $700,000 in property that *S* has transferred and assigned to the QDOT. A marital deduction of $700,000 is allowed to *D*'s estate assuming the estate tax return is filed and the QDOT election is made within the time limitation prescribed in § 20.2056A–3(a). No marital deduction is allowed for the $300,000 interest in jointly-owned property not transferred to the QDOT.

Example 2. Formula assignment. Under the terms of *D*'s will, the entire probate estate passes outright to *S*. Prior to the date *D*'s estate tax return is filed and before the date that the QDOT election must be made, *S* establishes a QDOT and *S* executes an irrevocable assignment in which *S* assigns to the QDOT, ''that portion of the gross estate necessary to reduce the estate tax to zero, taking into account all available credits and deductions.'' The assignment meets the requirements of paragraph (b) of this section, assuming that the QDOT is funded by the time that administration of *D*'s estate is completed.

Example 3. Jointly owned property. At the time of *D*'s death, *D* and *S* hold real property as joint tenants with right of survivorship. In accordance with section 2056(d)(1)(B), section 2040(a), and § 20.2056A–8(a), 60 percent of the value of the property is included in *D*'s gross estate. *S* establishes a QDOT and, prior to the date the estate tax return is filed and before the date that the QDOT election must be made, *S* transfers a 60 percent interest in the real property to the QDOT. The transfer satisfies the requirements of paragraph (b) of this section.

Example 4. [Reserved] For further guidance, see § 20.2056A–4T(d) *Example 4.*

Example 5. Transfer to QDOT subject to gift tax. *D*'s will bequeaths $700,000 outright to *S*. The bequest qualifies for a marital deduction under section 2056(a) except that it does not pass in a QDOT. *S* creates an irrevocable trust that meets the requirements for a QDOT and transfers the $700,000 to the QDOT. The QDOT instrument provides that *S* is entitled to all the income from the QDOT payable at least annually and that, upon the death of *S*, the property remaining in the QDOT is to be distributed to the grandchildren of *D* and *S* in equal shares. The trust instrument contains all other provisions required to qualify as a QDOT. On *D*'s estate tax return, *D*'s executor makes a QDOT election under section 2056A(a)(3). Solely for purposes of the marital deduction, the property is deemed to pass from *D* to the QDOT. *D*'s estate is entitled to a marital deduction for the $700,000 value of the property passing from *D* to *S*. *S*'s transfer of property to the QDOT is treated as a gift of the remainder interest for gift tax purposes because *S*'s transfer creates a vested remainder interest in the grandchildren of *D* and *S*. Accordingly, as of the date that *S* transfers the property to the QDOT, a gift tax is imposed on the present value of the remainder interest. See § 25.2702–1(c)(8) of this chapter exempting *S*'s transfer from the special valuation rules contained in section 2702. At *S*'s death, *S* is treated as the transferor of the property into the trust for estate tax and generation-skipping transfer tax purposes. See, e.g., sections 2036 and 2652(a)(1). The trust is not eligible for a reverse QTIP election by *D*'s estate under section 2652(a)(3) because a QTIP election cannot be made for the QDOT. This is so because the marital deduction is allowed under section 2056(a) for the outright bequest to the spouse and the spouse is then separately treated as the transferor of the property to the QDOT.

[T.D. 8612, 60 FR 43541, Aug. 22, 1995, as amended by T.D. 8819, 64 FR 23229, Apr. 30, 1999; 64 FR 33196, June 22, 1999; T.D. 9448, 74 FR 21510, May 7, 2009]

§ 20.2056A–4T Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust (temporary).

(a) through (c)(4)(ii)(A). [Reserved] For further guidance see § 20.2056A–4(a) through (c)(4)(ii)(A).

(c)(4)(ii)(B) The total present value of the annuity or other payment is the present value of the nonassignable annuity or other payment as of the date of the decedent's death, determined in accordance with the interest rates and mortality data prescribed by section 7520. The expected annuity term is the number of years that would be required for the scheduled payments to exhaust a hypothetical fund equal to the present value of the scheduled payments. This is determined by first dividing the total present value of the payments by the annual payment.

From the quotient so obtained, the expected annuity term is derived by identifying the term of years that corresponds to the annuity factor equal to the quotient. This is determined by using column 1 of Table B, for the applicable interest rate, contained in Publication 1457, Actuarial Valuations Version 3A. A copy of this publication is available beginning May 1, 2009, at no charge, electronically via the IRS Internet site at *http://www.irs.gov*. If the quotient obtained falls between two terms, the longer term is used.

(c)(5) through (c)(7). [Reserved] For further guidance see §20.2056A–4(c)(5) through (c)(7).

(d) *Examples 1* through *3*. [Reserved] For further guidance see §20.2056A–4(d) *Examples 1* through *3*.

Example 4. Computation of corpus portion of annuity payment. (i) At the time of D's death on or after May 1, 2009, D is a participant in an employees' pension plan described in section 401(a). On D's death, D's spouse S, a resident of the United States, becomes entitled to receive a survivor's annuity of $72,000 per year, payable monthly, for life. At the time of D's death, S is age 60. Assume that under section 7520, the appropriate discount rate to be used for valuing annuities in the case of this decedent is 6.0 percent. The annuity factor at 6.0 percent for a person age 60 is 11.0625 (1.0000 minus .33625, divided by .06). The adjustment factor at 6.0 percent in Table K for monthly payments is 1.0272. Accordingly, the right to receive $72,000 per year on a monthly basis is equal to the right to receive $73,958.40 ($72,000 × 1.0272) on an annual basis.

(ii) The corpus portion of each annuity payment received by S is determined as follows. The first step is to determine the annuity factor for the number of years that would be required to exhaust a hypothetical fund that has a present value and a payout corresponding to S's interest in the payments under the plan, determined as follows:

(A) Present value of S's annuity: $73,958.40 × 11.0625 = $818,164.80.

(B) Annuity Factor for Expected Annuity Term: $818,164.80/$73,958.40 = 11.0625

(iii) The second step is to determine the number of years that would be required for S 's annuity to exhaust a hypothetical fund of $818,164.80. The term certain annuity factor of 11.0625 falls between the annuity factors for 18 and 19 years in a 6.0 percent term certain annuity table (Column 1 of Table B, Publication 1457 Actuarial Valuations Version 3A, which may be obtained on the IRS Internet site). Accordingly, the expected annuity term is 19 years.

(iv) The third step is to determine the corpus amount by dividing the expected term of 19 years into the present value of the hypothetical fund as follows:

Corpus amount of annual payment: $818,164.80/19 = $43,061.31

(v) In the fourth step, the corpus portion of each annuity payment is determined by dividing the corpus amount of each annual payment by the annual annuity payment (adjusted for payments more frequently than annually as in (i) of this *Example 4*) as follows:

Corpus portion of each annuity payment: $43,061.31/$73,958.40 = .58

(vi) Accordingly, 58 percent of each payment to S is deemed to be a distribution of corpus. A marital deduction is allowed for $818,164.80, the present value of the annuity as of D's date of death, if either: S agrees to roll over the corpus portion of each payment to a QDOT and the executor files the Information Statement described in paragraph (c)(5) of this section and the Roll Over Agreement described in paragraph (c)(7) of this section; or S agrees to pay the tax due on the corpus portion of each payment and the executor files the Information Statement described in paragraph (c)(5) of this section and the Payment Agreement described in paragraph (c)(6) of this section.

Example 5. [Reserved] For further guidance see §20.2056A–4(d) *Example 5.*

(e) *Effective/applicability date.* Paragraph (c)(4)(ii)(B) and *Example 4* in paragraph (d) of this section are applicable with respect to decedents dying on or after May 1, 2009.

(f) *Expiration date.* Paragraph (c)(4)(ii)(B) and *Example 4* in paragraph (d) of this section expire on or before May 1, 2012.

[T.D. 9448, 74 FR 21510, May 7, 2009]

§ 20.2056A–5 Imposition of section 2056A estate tax.

(a) *In general.* An estate tax is imposed under section 2056A(b)(1) on the occurrence of a taxable event, as defined in section 2056A(b)(9). The tax is generally equal to the amount of estate tax that would have been imposed if the amount involved in the taxable event had been included in the decedent's taxable estate and had not been deductible under section 2056. See section 2056A(b)(3) and paragraph (c) of this section for certain exceptions from taxable events.

(b) *Amounts subject to tax—(1) Distribution of principal during the spouse's*